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SENATE BILL 3043
By McNally

AN ACT to amend Tennessee Code Annotated, Title 12, relative to limitation of liability under state contracts.

WHEREAS, the general assembly finds that it is in the best interest of the public to attract the maximum number of qualified vendors for state contracts for goods and services; and

WHEREAS, the general assembly finds that it serves a public purpose to encourage participation by qualified vendors for state contracts; and

WHEREAS, companies may be reluctant to bid on certain state contracts due to the possibility of unlimited liability on damages for negligence under those contracts; and

WHEREAS, the state has suffered from a lack of qualified vendors in certain procurement efforts because of objections to potential unlimited liability; and

WHEREAS, companies who do bid in unlimited liability situations may increase the price of their bids or proposals to cover this situation, even where such liability is remotely possible, causing an increase in costs to the taxpayers of this state; and

WHEREAS, it serves the public purpose to allow responsible state officials to allow state contractors to include limitations of liability on damages for negligence in certain state contracts when the alternatives would be higher prices or lack of goods or services; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 12, Chapter 3, Part 3, is amended by adding the following as a new appropriately designated section:

12-3-3___. (a) It is the intent of this act to permit the state to waive its sovereign immunity for the limited purpose of allowing the state to enter into contracts limiting the liability of certain contractors for damages for negligence in the circumstances provided in this act.

(b) The commissioner of general services may authorize negotiation of a contract whereby the state agrees to limit the liability of contractors to a certain amount or limit of damages for negligence, provided that such authorization is provided in writing in accordance with the following standards:

(1) Sealed bid procurement under Tennessee Code Annotated, Section 12-3-203 either has failed to provide a qualified bidder, or is not applicable to this procurement under state law;

(2) Allowing the limitation of liability is necessary to prevent harm to the state from failing to obtain the goods or services sought, or from obtaining the material at a higher price or from a less qualified bidder, if the state refused to allow a limitation of liability;

(3) The limitations and any alternative contract language agreed to are commercially reasonable in light of the risks to the state created by the type of goods or services purchased and the purposes for which they will be used; and

(4) The state will not agree to limit the liability of any contractor for intentional torts, criminal acts, or fraudulent conduct.

SECTION 2. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by adding the following as a new appropriately designated section:

12-4-1___. (a) It is the intent of this act to permit the state to waive its sovereign immunity for the limited purpose of allowing the state to enter into contracts limiting the

liability of certain contractors for damages for negligence in the circumstances provided in this act.

(b) The commissioner of finance and administration may authorize negotiation of a contract whereby the state agrees to limit the liability of contractors to a certain amount or limit of damages for negligence, provided that such authorization is provided in writing in accordance with the following standards:

(1) The state's standard procurement under Tennessee Code Annotated, Section 12-4-109 and regulations promulgated thereto has failed to provide a qualified proposer;

(2) Allowing the limitation of liability is necessary to prevent harm to the state from failing to obtain the goods or services sought, or from obtaining the material at a higher price or from a less qualified proposer, if the state refused to allow a limitation of liability;

(3) The limitations and any alternative contract language agreed to are commercially reasonable in light of the risks to the state created by the type of goods or services purchased and the purposes for which they will be used; and

(4) The state will not agree to limit the liability of any contractor for intentional torts, criminal acts, or fraudulent conduct.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.